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Al-Ghazālī on Philosophy and Jurisprudence

1 Introduction

As is well-known, al-Ghazālī (d. 505/1111) was an excellent scholar in various sciences. Moreover, he is renowned for having combined several disciplines in new and ingenious ways, a fact expressed, for instance, by Marie Bernard by calling him “un artisan de la fusion des systèmes de pensée” (1991). It thus seems legitimate to expect that al-Ghazālī would have something important to say about the combination of sciences which is at the centre of this volume, namely philosophy and jurisprudence, all the more as he wrote important works in both fields.

On closer inspection, though, things turn out to be more complicated. There are good reasons to suppose that his contribution to jurisprudence, or rather to the relation between jurisprudence and philosophy, does not really match his accomplishments in other domains. When we talk about Sufism, for instance, it is obvious that his approach was innovative, if not revolutionary, combining classical Sufism with elements taken from other disciplines, in particular philosophy. Moreover, al-Ghazālī himself stressed the original character of his writings on Sufism, entitling the most important amongst them *The Revival of the Religious Sciences* (*Iḥyā’ ‘ulūm al-dīn*).¹ The same applies to theology. In this case, his works may have been more conventional than in Sufism, but his impact on the field was nonetheless considerable and in many respects innovative. This has already been emphasised by Muslim historiographers such as Ibn Khaldūn (d. 808/1406) (1958a, 3:27–43, esp. 41; 1958b, 3:34–55, esp. 52),² and it is confirmed by modern scholarship which has long focused on al-Ghazālī’s accomplishments in *kalām* and philosophy, producing numerous articles and passionate debates on the topic.³

When it comes to jurisprudence, however, the situation is different. Of course, al-Ghazālī’s contribution to this field has been acknowledged, too, but

1 Al-Ghazālī’s reflections on Sufism (and philosophy) have been discussed regularly in modern scholarship. See among many others the recent publications by Gianotti 2001; Treiger 2012; Abrahamov 2015.

2 See also Ibn Khaldūn 1958a, 3:113–116; 1958b, 3:143–146.

3 Among the numerous publications which could be mentioned in this respect see in particular Frank 1992, 1994; Griffel 2009; Shihadeh 2016a; Rudolph forthcoming.

it has never raised the same kind of enthusiasm among scholars, either in the Muslim tradition or in modern academia. Ibn Khaldūn, to quote him again, has devoted just one line to al-Ghazālī when describing the science of “the principles of jurisprudence” (*uṣūl al-fiqh*) in his *Muqaddima* (1958a, 3:22; 1958b, 3:28–29). In the chapter on “jurisprudence” (*fiqh*) he does not even mention his name (1958a, 3:1–14; 1958b, 3:3–23). Modern scholars, in their turn, pay more attention to al-Ghazālī’s accomplishments in both fields but their output on the matter is limited, too. To illustrate this it may suffice to call to mind the two volumes on *Islam and Rationality: The Impact of al-Ghazālī*, recently edited by Georges Tamer and Frank Griffel in commemoration of his 900th anniversary. They contain numerous articles dealing with Sufism, theology, and philosophy but not a single chapter on jurisprudence, let alone its relationship to philosophy (Tamer 2015; Griffel 2016).

As compared to other topics, al-Ghazālī’s reflections on philosophy and jurisprudence seem thus to be less prominent and less striking. So far, they have neither been at the centre of interest nor generated any extensive academic debate. As a consequence, my own contribution will not focus on a specific, disputed problem. I will rather try to give a general outline of the topic and the main questions which are at stake. In order to do so, three points will be raised under the headings of “Philosophy and Jurisprudence”, “Logic and Jurisprudence”, and “Philosophical Ethics and Jurisprudence” before arriving at a final section in which we will look at a fifteenth century scholar who seems to have taken al-Ghazālī’s project further than al-Ghazālī did himself.

2 Philosophy and Jurisprudence – or: the Theoretical Background of the Topic

First we have to examine how al-Ghazālī conceived of philosophy and jurisprudence and how he connected them to each other and to further disciplines. This is a question about taxonomy and the classification of sciences to be answered by looking into the texts which he has especially devoted to this topic. As a matter of fact, al-Ghazālī liked classifying the sciences. He has written no fewer than eight times on this matter. The series of presentations starts with *Maqāṣid al-falāsifa* (*The Intentions of the Philosophers*), continues with *Faḍā’ih al-Bāṭiniyya* (*The Disgraces of the Batinites*), *Jawāhir al-Qur’ān* (*The Jewels of the Qur’an*), *Iḥyā’ ‘ulūm al-dīn* containing two classifications, *Mizān al-‘amal* (*The Scale of Action*) including another two, and finally ends with *al-Mustaṣfā min*

‘ilm al-uṣūl (*The Distillation of the Science of the Principles [of Jurisprudence]*).⁴ Each of these different taxonomies reveals a certain facet of his approach to the topic, but for our purpose it is sufficient to examine two of them: the classification given in Book One of the *Iḥyā’*, that is, the *Kitāb al-‘Ilm* (*The Book of Knowledge*), and the one given in the *Mustaṣfā*. The first classification is the most elaborate ever presented by al-Ghazālī, the second the only one given in a work on jurisprudence, which makes it particularly interesting for us.

To begin with the *Kitāb al-‘Ilm*:⁵ as al-Ghazālī explains in this book, there are two classes of sciences which are incumbent on the community as a whole (*farḍ al-kifāya*), one of them being (I) the non-religious (*ghayr shar‘iyya*) and the other (II) the religious (*shar‘iyya*) sciences. The first class, that is, the non-religious sciences, can be divided into three categories: (1) praiseworthy disciplines (*maḥmūda*) such as medicine, mathematics, and politics (*siyāsa*); (2) blameworthy disciplines (*madhmūma*) such as magic and the science of talismans; and (3) permissible disciplines (*mubāḥ*) such as poetics and history. In contrast to that, all religious sciences are praiseworthy, at least in principle, because they are “learned from the prophets.” In practice, it may have happened that scholars have introduced some doubtful and blameworthy elements into these disciplines, too (al-Ghazālī 1403/1982, 1:16.7–23, 2009, 59–60 (French)).

The praiseworthy among the religious sciences comprise a whole range of disciplines, presented by al-Ghazālī in a complex order of categories and subdivisions. The first category (1) is constituted by sciences dealing with the principles or sources (*uṣūl*), that is, the Qur’an, the Sunna of the Prophet, the consensus of the community (*ijmā’*), and the traditions of the Prophet’s companions (*āthār al-ṣaḥāba*). The second (2) comprises the sciences of the branches (*furū’*) which are divided into (a) the science of this world (*‘ilm al-dunyā*), namely jurisprudence (*fiqh*), and (b) the science of the path to the hereafter (*‘ilm ṭariq al-ākhirā*). The latter is subdivided into (i) the science of unveiling (*‘ilm al-mukāshafa*), which is the knowledge of the righteous (*al-ṣiddiqūn*) and those close to God (*al-muqarrabūn*), essentially the apex of the sciences (*ghāyat al-‘ulūm*), according to al-Ghazālī, and (ii) the science of [right] practice (*‘ilm al-mu‘āmalā*), also called the science of the states of the heart (*‘ilm aḥwāl al-qalb*), which constitutes the topic of the *Iḥyā’*. The third category (3) deals with preliminaries (*muqaddimāt*) such as lexicography (*luḡha*) and grammar (*naḥw*); the fourth category (4) with supplementary disciplines (*mutammimāt*),

⁴ An overview of these classifications with special attention to the “science of unveiling” (*‘ilm al-mukāshafa*) is given by Treiger 2011.

⁵ For the following, see Table 1 in the Appendix. Compare Treiger 2011, 6–10.

including again a number of divisions and subdivisions. This time the main division is into (a) sciences related to the Qur'an and (b) sciences related to the Sunna. The former are subdivided into (i) disciplines dealing with the expression (*lafẓ*) of the Qur'an like the Qur'anic readings (*qirā'āt*) and letters (*ḥurūf*) and (ii) disciplines dealing with its meaning (*ma'nā*) such as exegesis (*tafsīr*) and *nota bene* the principles of jurisprudence (*uṣūl*). The latter comprise the science of the transmitters (*'ilm al-rijāl*) and again the principles of jurisprudence (*uṣūl al-fiqh*) because the Sunna is, next to the Qur'an, the most important source of Islamic law (al-Ghazālī 1403/1982, 1:16.23–17.15, 2009, 60–62 (French)).

All in all, the classification is sophisticated, and it is admittedly interesting and instructive, but does not appear to supply the information we would actually like to have. In particular, the text says not a word about philosophy nor about theology, which is surprising, to say the least, in a classification including non-religious as well as religious sciences.

Al-Ghazālī must have been aware of these difficulties for, having finished his presentation, he adds some further information. It concerns partly the absence of theology, partly the absence of philosophy within the classification, both explanations being of interest for us. Regarding theology, we are told that its main arguments are already to be found in the Qur'an and the Sunna. Apart from that, theology has nothing to offer but dialectical exercise and the inclination to quarrel with opponents. Therefore, *kalām* may be helpful in protecting the community against the sophistries of heretics and unbelievers, but it is certainly not the right way to obtain knowledge about God's essence and His attributes (al-Ghazālī 1403/1982, 1:22.4–13, 2009, 74–75 (French)).⁶ Regarding philosophy, al-Ghazālī's assessment is even harsher. As he tells us, it does not constitute a science in its own right (*'ilm bi-ra'sihā*), but a conglomerate of four genuinely different disciplines. These are (1) mathematics, (2) logic, that is, the investigation of proofs and definitions, which is actually part of theology, according to al-Ghazālī, (3) metaphysics (*ilāhiyyāt*), that is, the investigation of God's essence and attributes, which he also considers to be part of theology, and (4) physics (*ṭabī'iyāt*). The latter aims at investigating the material bodies and as such may be compared to medicine, but medicine is indispensable for humans whereas physics is not (al-Ghazālī 1403/1982, 1:22.13–24, 2009, 75–76 (French)).

These explanations are astonishing and would certainly deserve a detailed discussion. Yet, for our purpose, it is sufficient to realise that, despite their explicit character, they do not help us to answer the questions we have. It appears that the elaborate classification of the sciences presented in the *Kitāb*

6 Compare al-Ghazālī 1403/1982, 1:22.24–24.14; 2009, 76–80 (French).

al-ʿIlm recognises logic as both legitimate and relevant to the religious sciences, including *kalām* and (*uṣūl al-ʿ*) *fiqh*. But apart from that, it is silent about the relationship between philosophy and jurisprudence. This makes it all the more important to proceed to our next text. That is the *Mustaṣfā min ʿilm al-uṣūl*.

Of course, the *Mustaṣfā* is not about the question of how to classify and organise the sciences. Nevertheless, it can be useful for our purpose, as it contains three pieces of information which might be relevant to us, one in the Exordium of the book (*Khuṭbat al-kitāb*), one in its Preface (*Ṣadr al-kitāb*), the third one being the structure of the book itself.

To start with the exordium:⁷ as al-Ghazālī explains at the very beginning, there are three classes of sciences: (I) the purely rational disciplines (*ʿaqlī maḥḍ*); (II) the purely traditional disciplines (*naqlī maḥḍ*); and (III) the disciplines combining reason and revelation (*mā izdawaja fihi al-ʿaql waʾl-samʿ*), which are the most exalted of all. The examples given in this context are mathematics and astronomy for the first class, *ḥadīth* and *tafsīr* for the second, and *fiqh* as well as *uṣūl al-fiqh* for the third (al-Ghazālī 1971, 9.5–14).

Three pages later, al-Ghazālī picks up the same topic, this time in the preface to his book.⁸ Here we are told that the sciences are divided into two classes: (I) the rational sciences (*ʿaqliyya*) and (II) the religious sciences (*dīniyya*), both of which can be subdivided into universal and particular disciplines. In case of the religious sciences, (1) the universal disciplines are identified as theology (*kalām*) and the science of the hidden, also known as the science of the heart (*ʿilm al-bāṭin/al-qalb*), whereas (2) the category of particular disciplines is constituted by the sciences dealing with *fiqh*, *uṣūl al-fiqh*, *ḥadīth*, and *tafsīr* (al-Ghazālī 1971, 12.10–13.8).⁹

Another two pages later, al-Ghazālī comes to explaining the structure of his book,¹⁰ and there we learn that the *Mustaṣfā* consists of an Introduction (*Muqaddima*) and four major parts. The Introduction is devoted to the epistemological fundamentals of the theoretical sciences (*madārik al-ʿulūm al-naẓariyya*), whereas the four parts of the book deal with (I) legal assessments (*al-aḥkām*); (II) the sources of legal assessments (*uṣūl al-aḥkām*); (III) the proofs for legal assessments (*adillat al-aḥkām*); and (IV) the conditions for being a *mujtahid* (al-Ghazālī 1971, 15.5–18.9).

7 See Table 2 in the Appendix; compare Treiger 2011, 17.

8 See Table 3 in the Appendix; compare Treiger 2011, 17.

9 The long elaboration on *kalām* as presented by al-Ghazālī in this context has been translated and analysed by Treiger 2011, 18–22.

10 See Table 4 in the Appendix.

Again, one might wonder what all of this has to do with our topic. Throughout the introductory pages of the *Mustaṣfā*, al-Ghazālī does not mention philosophy nor does he refer to its relationship to jurisprudence. Despite this fact, however, it is possible to establish a connection between these two realms proceeding from the passages just quoted. One approach would involve turning from al-Ghazālī himself to the way later authors such as Ibn Rushd (d. 595/1198) understood his text. As is well known, Ibn Rushd wrote an epitome of his book entitled *Mukhtaṣar al-Mustaṣfā*.¹¹ Its main goal is to summarise the content of the *Mustaṣfā*. In doing so, Ibn Rushd presents a keen analysis of the intentions expressed in the text, touching on both juridical and philosophical aspects.

At the very beginning of his *Mukhtaṣar*, Ibn Rushd discusses the classification of the sciences given by al-Ghazālī, but not by simply repeating the same content in other words; his intention is rather to elucidate the background and the structure of al-Ghazālī's argument by presenting his points and his reflections in a new arrangement. This arrangement runs as follows: in terms of their objects and their goals, we have to distinguish three classes of sciences. (I) The first investigates theoretical issues such as the existence of atoms or the question of whether the world has been created in time (*ḥudūth al-'ālam*). Consequently, its goal is to create reasoned beliefs (*i'tiqādāt*) on these issues in our souls. (II) The second class is practical science which consists of two categories. One of them is dealing with universals such as legal assessments (*al-aḥkām*), the sources of legal assessments (*uṣūl al-aḥkām*), and the conditions of being a *mujtahid*. The other one is devoted to particular questions such as the correct way of praying or fasting which can be summarised as the duties incumbent on every believer (*al-farā'id*). (III) The third and final class is the instrumental sciences. They deal with the rules (*qawānīn*) and the conditions of how to obtain knowledge, among them the proofs (*adilla*) to be used in both classes mentioned before (Bou Akl 2015, 118.8–17 (Arabic), 119.17–35 (French)).

So far, the discourse has been about goals and objects. Ibn Rushd has characterised the sciences under discussion by referring to their subject-matters. However, we need not stay at this provisional point but can identify every science he alluded to, and this at two different levels. The first level is more or less self-explanatory because it remains within the conceptual framework of the religious sciences shared by the *Mustaṣfā* and the *Mukhtaṣar*. On this level, it is quite easy to identify the disciplines intended by Ibn Rushd when he mentions their respective goals and objects. The theoretical science dealing with topics such as the

¹¹ The text has recently been edited and investigated by Ziad Bou Akl (2015). The following owes much to his observations.

generation of the world in time is to be identified with theology (*kalām*). The universal practical science dealing with legal assessments and their sources can be equated with the principles of jurisprudence (*uṣūl al-fiqh*). The particular practical science dealing with our concrete duties corresponds to jurisprudence (*fiqh*). And the instrumental science dealing with the rules and the conditions of cognition is nothing but another part of the *uṣūl al-fiqh*, that is, the part which is devoted to the proofs of the legal assessments (*adillat al-aḥkām*).

In addition to these assignments, there is yet another possibility of identifying the sciences which are at stake here. This becomes evident when we dispense with the level of religious disciplines and turn to the level of philosophy. Within the conceptual framework of philosophy, the correspondence between the objects of knowledge and their respective disciplines runs as follows – and this is confirmed by other texts written by Ibn Rushd: the sciences dealing with God and the structure of this world are metaphysics and physics. The universal practical science is ethics, the particular practical science politics, and the science dealing with the rules and the conditions of cognition cannot be but logic.¹²

As a result, there are two lists. Following Ibn Rushd we have recognised the parallels between rational and religious sciences and we have finally succeeded in establishing a relationship between philosophy and the principles of jurisprudence. As it turned out, some parts of the *uṣūl al-fiqh* correspond to logic, whereas another part of it corresponds to philosophical ethics. I will therefore focus on these two issues in the following.

3 Logic and Jurisprudence

Of the aspects related to our topic, logic is probably the one which has received the bulk of scholarly attention (Brunschrivig 1971; Hana 1974; Marmura 1975; al-‘Ajam 1989; Street 2004, 555–559; Rudolph 2005; El-Rouayheb 2016, 411–416).¹³ Al-Ghazālī himself promoted this interest by stressing the importance of Aristotelian logic in several contexts, the most prominent of them being probably the unconditioned appraisal of the science of logic in his autobiographical writ-

¹² See Table 5 in the Appendix; compare Bou Akl 2015, 7–8 and the references to other texts by Ibn Rushd given by Bou Akl 2015, 331–332.

¹³ Compare also the unpublished PhD dissertations by al-Sayyed Ahmad 1981 and Becheri 2009.

ing, *The Deliverer from Error* (*al-Munqidh min al-ḍalāl*).¹⁴ Furthermore, he wrote a number of introductory works on logic such as *The Standard of Knowledge* (*Mi'yār al-'ilm*), *The Touchstone for Speculation* (*Mihakk al-naẓar*), and the first part of the *Mustaṣfā*, not to mention *The Straight Balance* (*al-Qiṣṭas al-mustaqīm*), which is rather an apology of syllogistic reasoning than an exposition of it.¹⁵

The goal of these introductory writings was twofold. First, they were meant to explain the logical terminology al-Ghazālī himself had used in *The Incoherence of the Philosophers* (*Tahāfut al-falāsifa*). This is one of the purposes explicitly mentioned in the preface to his *Mi'yār al-'ilm* (al-Ghazālī 1961, 60.7–9). Second and more important, they were supposed to teach religious scholars how to apply Aristotelian logic within their own disciplines. Apparently, al-Ghazālī was convinced that everybody working in the religious sciences had to learn the methods of proof and the conditions of demonstration. This seems to be the reason why he explained these rules in more than one introductory writing and why his various explanations were situated on different intellectual levels. *Mi'yār al-'ilm*, for instance, presents the important elements of Aristotelian logic in a detailed manner, using broadly philosophical terminology. In addition, its examples are often taken from metaphysical issues, which gives reason to believe that its addressees were mainly theologians.¹⁶ By contrast, *Mihakk al-naẓar* and the Introduction to the *Mustaṣfā* (which heavily draws on the *Mihakk*) are confined to the basics of logic. They avoid philosophical language, replace it, if possible, by the terminology of the religious sciences,¹⁷ and focus on examples taken from jurisprudence. In all probability its addressees thus were the *fuqahā'*.¹⁸

¹⁴ Containing sentences such as: "There is nothing in this [i.e. logic] which must be rejected. On the contrary, it is the sort of thing mentioned by the *mutakallimūn* and the partisans of reason (*ahl al-naẓar*) in connection with the proof they use" (al-Ghazālī 1969, 22.13–14; McCarthy 2000, 65 (English)).

¹⁵ Edition of the text by Chelhot; for a short description of the contents, see Rudolph 2005, 86–88; compare also Kleinknecht 1972.

¹⁶ This is confirmed by the fact that the text was written immediately after and in close connection to the *Tahāfut*; compare also my remarks in Rudolph 2005, 85.

¹⁷ The relationship between philosophical and juridical terminology is explicitly addressed in the last chapter of the *Mihakk* where al-Ghazālī discusses various ways of defining *ḥadd* ("definition"), *'ilm* ("knowledge"), *'araḍ* ("accident"), *ḥādith* ("created in time"), *mutaḍādd* ("contrary"), *ḥayāt* ("life"), *ḥaraka* ("motion"), and *wājib* ("necessary") (al-Ghazālī 1994, 145–161; compare also al-Ghazālī 1971, 31.9–39.22).

¹⁸ Additional evidence is given by the fact that al-Ghazālī distinguishes in the *Mihakk* three types of scholars: the theologians (*al-mutakallimūn*), the logicians (*al-manṭiqiyyūn*), and "us"

The theoretical background of al-Ghazālī's commitment to logic consists of two basic assumptions. One of them is his conviction that all kinds of valid proofs, as applied in the sciences, are nothing but variations of the same logical structure. Consequently, they all can be converted into their basic pattern which is the syllogistic form (Rudolph 2005, 77–79, 89–90).¹⁹ The second assumption is even more general. According to al-Ghazālī, syllogistic reasoning cannot be reduced to its scientific applications. In its basic elements, it is rather the common way used by all human beings when they speculate and try to discover new insights. Thus he writes in Book 39 of the *Iḥyā'*, that is, *The Book about Thinking* (*Kitāb al-Taffakur*): "The meaning of 'thinking' (*ma'nā al-fikr*) is to bring two pieces of knowledge into the heart [of a human being] in order to conclude a third piece of knowledge" (al-Ghazālī 1403/1982, 4:425.16, 2012, 37).²⁰ Afterwards, this definition is illustrated by a syllogism and repeated in several variations, all of them stressing its evidential and universal validity.

As a consequence, every scholar should learn how to use syllogisms correctly. In order to do so, he should study Aristotelian logic, which is the authoritative and unsurpassed presentation of syllogistic reasoning. By stressing this argument again and again, al-Ghazālī established a link between logic and jurisprudence declaring the first to be an indispensable propaedeutics to the second.²¹ However, his optimism concerning the learning abilities of the *fuqahā'* and the actual applicability of syllogisms to *fiqh* was not unconditional. On a close reading of his manuals on logic, one can find a couple of passages which come across as more sceptical and thus uncover the limits of his own methodological programme.

One of these passages is a chapter devoted to the shortcomings of religious scholars. As al-Ghazālī explains, many of them tend to use arguments which are neither correct nor reliable, for a variety of reasons. One is simply the scholars' lack of knowledge about methodological questions (*quṣūr al-'ilm*) (al-Ghazālī 1994, 109.7, 1971, 62.15), another their tendency to mingle several types of arguments, thereby combining what should be kept strictly separate (al-Ghazālī

(*naḥnu*), that is, apparently, the *fuqahā'* (al-Ghazālī 1994, 97.24–25; compare also al-Ghazālī 1971, 54.19–20).

¹⁹ The same conviction lies behind al-Ghazālī's assumption that analogical argumentation is inconclusive unless it can be regimented into syllogistic form (El-Rouayheb 2016, 412).

²⁰ *I'lām anna ma'nā al-fikr huwa iḥḍār ma'rifatayn fī l-qalb li-yustathmara minhumā ma'rifa thālitha.*

²¹ Al-'Ajam 1989, 93–99 emphasises that al-Ghazālī used Aristotelian logic in order to enrich Islamic jurisprudence; compare also Said 2013, 78–79.

1994, 109.9–10, 1971, 62.16–17).²² The third problem consists of the fact that many scholars treat the premises to be used in syllogisms in a careless and incorrect way. Sometimes they do not reveal their premises, allegedly because they are evident (*wāḍiḥ*) (al-Ghazālī 1994, 109.7–8, 1971, 62.15).²³ Sometimes they accept premises which are not proven at all but only generally accepted and well-known (*mashhūr*) (al-Ghazālī 1994, 108.6–9, 1971, 61.19–21). And sometimes they even hide their premises in order to intentionally deceive (*talbīs*) their opponents. This is due to the fact that religious scholars, as a rule, adhere to the doctrines of their own school, trying to justify and defend them at any cost (al-Ghazālī 1994, 109.8–9, 1971, 62.16).²⁴

The list of shortcomings which are common among scholars is long but it has to be completed by another problem. It does not concern the personal (in)capacities of the *fuqahā'* but the structure of their discipline, that is, jurisprudence itself. Of course, jurisprudence is a science based on reasoning. As such it is open to methodological reflections as presented by al-Ghazālī in the *Mi'yār*, the *Mihakk*, and the *Mustaṣfā*. However, jurisprudence and in particular its sources cannot be submitted to rationalisation in every respect as they include elements which are based on tradition and have to be accepted necessarily, even if they are not compatible with philosophical logic.

One of the difficulties to be mentioned in this context is the status of the propositions used in jurisprudence. Most of them have to be taken from the Qur'an and the Sunna, both of which constitute the uncontroversial material sources of Islamic law. As a consequence, many premises accepted by the *fuqahā'* are not compatible with the rules of demonstrative logic. They are neither universally valid nor do they meet the conditions of certainty (*yaqīn*),²⁵ which would be the prerequisites of being a premise in a demonstrative syllogism. Instead, jurists often argue on the basis of propositions which are nothing but commonly accepted (*mashhūrāt*), adopted from trustworthy people

²² Compare also al-Ghazālī 1994, 111.11–ult.; 1971, 64.1–8.

²³ Compare also al-Ghazālī 1994, 109.13–110.1; 1971, 62.17–63.5.

²⁴ Compare also al-Ghazālī 1994, 110.1–111.11; 1971, 63.5–64.1.

²⁵ According to al-Ghazālī (1994, 102–108; 1971, 57–62), who follows essentially al-Fārābī and Avicenna in this respect, six classes of premises can be characterised as certain (*yaqīn*): (1) primary propositions (*awwaliyyāt*) such as the axiom of contradiction; (2) self-perceptions (*mushāhadāt bāṭina*) as, for instance, “I am hungry”; (3) sense perceptions (*maḥsūsāt zāhira*) as, for instance, “Salt is white”; (4) experiences (*tajribiyyāt*) as, for instance, “Fire is burning”; (5) safe traditions (*mutawātirāt*) as, for instance, “Mecca exists”; (6) indubitable conceptions of the imaginative faculty (*wahmiyyāt*) as, for instance, “A body has six sides” (meaning: it has three dimensions). Compare also al-Ghazālī 1961, 186–193 where the classification and the terminology are slightly different. For al-Fārābī's treatment of the topic, see Black 2006.

(*maqbulāt*) or expressing a wide-spread belief (*maznūnāt*) (al-Ghazālī 1961, 193.7–198.18). More than that: they are actually justified to do so because preponderant belief (*ẓann*) is all that is needed in the legal sciences (*al-fiqhiyyāt*) in contrast to the rational sciences (*al-aqliyyāt*) which have to be based on certain premises (al-Ghazālī 1961, 176.7–177.12).

Another difficulty applies to the argument which is at the core of legal reasoning, that is, analogy or the *qiyās* of the *fuqahā*. As mentioned above, al-Ghazālī was convinced that it can be converted into a syllogism. As a consequence, he acknowledged its general validity and assumed it to be equivalent to philosophical logic, at least in theory. When it comes to practice, however, al-Ghazālī adds an important qualification. According to him, jurists at work should not refer to syllogisms but keep analogy as the standard form of their reasoning. Apparently, this fits better to the requirements of Islamic law, which is based not upon universally valid premises but particular propositions.

The point is explained in a chapter of the *Mi'yār* entitled “The Paradigm” (*al-tamthīl*) (al-Ghazālī 1961, 165–177).²⁶ It investigates the analogy of the jurists (*al-qiyās al-fiqhī*) as well as the inference from the visible to the invisible (*al-istidlāl bi'l-shāhid 'alā l-ghā'ib* and *radd al-ghā'ib 'alā l-shāhid*, respectively) commonly used in Islamic theology. Both of them correspond *formaliter* to the argument called “paradigm” (*tamthīl*) in the Aristotelian tradition. This had already been demonstrated by Abū Naṣr al-Fārābī (d. 339/950 or 951)²⁷ whose logical writings were in more than one respect a source of inspiration for al-Ghazālī (Street 2004, 559). As a matter of fact al-Ghazālī follows al-Fārābī in equating the *qiyās* of the jurists and the *istidlāl* of the theologians with the *tamthīl* of the philosophers (al-Ghazālī 1961, 165.8–10). Furthermore, he insists on the fact that all three of them can be converted into syllogistic form.²⁸ Yet, in practice, his advice is nuanced.

²⁶ The chapter has been analysed by El-Rouayheb 2016, 412–414 (who refers to a different edition of the *Mi'yār*). The following remarks of mine are heavily indebted to his observations and results.

²⁷ The topic is discussed in the last two chapters of al-Fārābī's *Short Book on the Syllogism* (*Kitāb al-Qiyās al-ṣaḡhīr*), also known as *Short Summary of Logic as Practiced by the Theologians* (*al-Mukhtaṣar al-ṣaḡhīr fī l-manṭiq 'alā ṭarīqat al-mutakallimīn*). The Arabic text is available in two editions, one of them prepared by Dānishpazhūh and the other one by al-'Ajam (who erroneously printed these two chapters at the end of another book by al-Fārābī, that is, his *Kitāb* [or: *al-Madkhal ilā*] *al-Qiyās*). An English translation is given by Rescher 1963. For a short description of the work, see Rudolph 2017, 557–558. A detailed examination of al-Fārābī's analysis of the *tamthīl*, the *istidlāl*, and the *qiyās fiqhī* is to be found in Lameer 1994, 40–42, 176–258.

²⁸ For the examples given in the *Mi'yār*, see below. Another important source would be al-Ghazālī's *The Balanced Book of What-to-Believe* (*al-Iqtisād fī l-i'tiqād*) which contains a number

While recommending the *mutakallimūn* to actually make use of syllogisms in their writings, he tells the *fuqahā'* that they would do better to stick with their traditional analogical arguments instead of replacing them by syllogisms.

This advice is illustrated by several concrete examples. The first example raises an issue often discussed in Islamic theology, that is, the question of whether – or rather, for which reason – we may assume that the heavens are not eternal but created in time. The traditional argument used by the *mutakallimūn* in this respect is an *istidlāl* running as follows: “The heavens are created in time since they are composite bodies like animals and plants and these are created in time” (al-Ghazālī 1961, 165.14–15).²⁹ Yet, this argument is inconclusive, as al-Ghazālī explains. Presented in this form, its validity depends on the assumption that being composite is the “cause” of the judgement that animals and plants are created in time. This assumption, in its turn, can only be taken for granted if we know for sure that anything composite (including animals and plants) must be created in time. The crucial element of the entire proof is thus the universal premise “Everything composite is created in time.” Yet, if this is the case, we should mention it explicitly by constructing a different argument. This argument should be a demonstrative syllogism in the first figure running as follows: “The heavens are composite. Everything composite is created in time. The heavens are created in time.” Presented in this form, our proof has become conclusive, according to al-Ghazālī. Hence it follows that syllogisms are superior to traditional analogies as far as theological issues are concerned (al-Ghazālī 1961, 165.16–166.2).³⁰

The case is different when it comes to juridical issues. This is illustrated by another example raising the famous problem whether – or rather, for which reason – consuming date wine is prohibited. Traditionally, the prohibition was justified by an analogy. It can be formulated in various ways, one of them being: “If we know that grape wine (*khamr*) is prohibited and we have a preponderant belief (*ẓann*) that the cause (*illa*) for the prohibition is that it is intoxicating, then we are justified in concluding that date wine (*nabīdh*), which is also intoxicating, is also prohibited.”³¹ In principle, this *qiyās* can be transformed into a categorical syllogism just like the theological *istidlāl* mentioned before. The appropriate syllogism would run something like “Every date wine is an intoxicant. Every intoxicant is prohibited. Every date wine is prohibited” (al-Ghazālī

of categorical syllogisms serving as arguments in the theological discussion; compare my preliminary remarks on the topic in Rudolph 2005, 88–91.

²⁹ Compare El-Rouayheb 2016, 412.

³⁰ Compare El-Rouayheb 2016, 412.

³¹ The wording is taken from El-Rouayheb 2016, 413; compare al-Ghazālī 1961, 171.17.

1994, 90.9–10, 1971, 50.1–2),³² which seems to be perfect, at least on formal grounds. In this case, however, al-Ghazālī prefers keeping the analogical form of the argument. Obviously, he is convinced that, whereas syllogistic reasoning fits better to theological issues, the *qiyās* is better adapted to the requirements of legal decisions. One reason might be that when it comes to juridical matters like the prohibition of consuming wine, analogical reasoning is more explicit and more transparent: it mentions all the relevant elements of the argument including its root (*aṣl*) and the judgement (*ḥukm*) attributed to the root. In contrast to that, the syllogism omits both the root and its judgement replacing them by an allegedly universal premise (“Every intoxicant is prohibited”), the status of which is not actually confirmed.

We may thus conclude that the connection between logic and jurisprudence as established by al-Ghazālī is less firm than we might have expected. In this respect his goal seems to have been theoretical rather than practical. The *fuqahā* should know the general rules of Aristotelian logic but they were not expected to apply them to every legal question. All in all it appears very likely that al-Ghazālī deemed the ties between *manṭiq* and *fiqh* to be less strong than those between *manṭiq* and *kalām*. He is not very explicit on this point but his reason may have been that jurisprudence was an area where preponderant belief and non-certain premises were sufficient, whereas theology, seeking knowledge of God and His creation, was viewed as a rational science (*‘ilm ‘aqli*) striving for certainty (El-Rouayheb 2016, 414).³³

4 Philosophical Ethics and Jurisprudence

As mentioned before, Ibn Rushd was convinced that there are structural parallels between *uṣūl al-fiqh* and philosophical ethics. It thus seems appropriate to examine these parallels by asking what al-Ghazālī has to say about them. The best way to do so appears to be to address his major writings in these two fields, that is, the *Mustaṣfā* in jurisprudence and the *Mizān al-‘amal* in ethics. In both cases, we want to know if they contain reflections and arguments referring to the field of the other. So, we will ask whether al-Ghazālī discusses issues of ethics in the *Mustaṣfā* and issues of jurisprudence in the *Mizān*.

To start with the latter: as an attentive reading of the *Mizān* reveals, the term *fiqh* is actually mentioned several times within the book. However, none of these

³² Compare El-Rouayheb 2016, 413.

³³ Compare al-Ghazālī's entire discussion of the *fiqh*hiyyāt at 1961, 170.22–177.12.

passages gives us a systematic account of what jurisprudence actually is and what its relationship to ethics might be. They rather consist of scattered remarks about *fiqh* and about the *fuqahā'*, some of which seem to be completely accidental whereas others betray an ironic, if not extremely critical, tone.

To give just two examples: in one passage of the *Mizān*, *fiqh* is assigned to the sphere of politics, that is, the art of governing people (*siyāsa*). This was the usual way of locating it, as we have already been told by Ibn Rushd. Yet, al-Ghazālī for his part adds a further qualification to this general statement. According to him, the *fuqahā'* as well as the theologians, who are called *wu'āẓ* ("preachers") in this context, are only in the position to govern ordinary people (*al-'awāmm*). The governance of the elite (*al-khawāṣṣ*) cannot be their task but must be delegated to real scholars and sages (*al-'ulamā' wa'l-ḥukamā'*) (al-Ghazālī 1964, 329.17–18, 2006, 184 (German)).

The second critique goes in the same direction. It focuses on the question of how we obtain knowledge and whether knowledge is attainable by everybody and in any scientific discipline. Here again, al-Ghazālī's position is very clear. For him, real insight is only accessible to those who have cleansed their souls and opened their minds in order to understand the intelligible structure of the world and the divine realities (*al-ḥaqā'iq al-ilāhiyya*) (al-Ghazālī 1964, 218.ult.–219.4, 2006, 109 (German)). Throughout the *Mizān*, this way of gaining knowledge is stressed by him,³⁴ which demonstrates that the epistemology presented in this text combines both Sufi convictions and philosophical elements.³⁵ As a consequence, the knowledge al-Ghazālī is talking about is not attainable by jurists; their arguments can at best play a secondary role in this context. This is illustrated by two plays on words, obviously meant to mock the doctors of law and their ignorance. The first says that the *fuqahā'* often teach persons who possess more insight (*afqah*) than themselves (al-Ghazālī 1964, 220.12, 2006, 110). The second affirms that everybody who makes just a little effort (*al-qalīl bi'l-ijtihād*) in order to obtain real knowledge will easily surpass the *mujtahidūn*, that is, the official representatives of *ijtihād* (al-Ghazālī 1964, 219.11, 2006, 109).

In short, when writing the *Mizān al-'amal*, al-Ghazālī was not interested in connecting ethics and jurisprudence. Whatever he says about *fiqh* or *uṣūl al-fiqh* in this book demonstrates that he did not consider it the right way to examine ethical problems and to form our character, both of which are the goals of

³⁴ Compare, for instance, al-Ghazālī 1964, 240–246; 2006, 126–129 and al-Ghazālī 1964, 251–254; 2006, 133–135.

³⁵ For a general introduction to al-Ghazālī's ethics, see Sherif 1975. The fact that *Mizān al-'amal* presents both philosophy and Sufism as paths to the highest felicity has often been stressed, recently by Garden 2015, 210–228 and Mohamed 2015, 188–193; compare also Said 2013, 92–113.

akhlāq. This is confirmed by another passage from the *Mizān* worth mentioning here. It deals with the fundamental question of all ethics, namely: “How can we know what is good and what is bad?” Al-Ghazālī’s answer refers to neither the Qur’an nor to legal assessments but simply to human intellect. As he explains, it is our intellect that enables us to solve this problem and to distinguish what has to be distinguished, namely “true” and “false” in propositions or beliefs (*al-ḥaqq wa’l-bāṭil fī l-i’tiqādāt*), sincerity and lies in speech (*al-ṣidq wa’l-kidhb fī l-maqāl*), and “good” and “bad” in our acts (*al-jamīl wa’l-qabīḥ fī l-af’āl*) (al-Ghazālī 1964, 233.7–10, 2006, 120–121).³⁶

Having arrived at this point we have to admit that the results obtained so far do not encourage us to continue our investigation. What al-Ghazālī explains in the *Mizān* seems to exclude any serious relationship between the science of ethics and *uṣūl al-fiqh*. However, we still have to cross-check this result by turning to other writings and changing our perspective. So, our last question is whether the *Mustaṣfā* contains anything relevant about ethics.

Unsurprisingly, the answer is no. Throughout the *Mustaṣfā*, al-Ghazālī does not address ethical questions, at least not in an explicit manner. The only exception to be mentioned in this context is a section from the first part of the book discussing the nature and the constituent elements of legal assessments (*aḥkām*) (al-Ghazālī 1971, 69–80; Reinhart 1995, 87–104 (English)). This section was examined, some years ago, in a book by A. Kevin Reinhart entitled *Before Revelation*.³⁷ As we learn from his book, it was part of a lengthy controversy in Muslim religious thought focusing on the problem of how we know about moral judgements. The controversial question which was at stake can be summarised as follows: what is the assessment (if any) for useful and beneficial human acts before revelation comes to assign their value? Are useful acts before revelation proscribed, permitted, obligatory, or something else (Reinhart 1995, 29–31, 38, 62)?³⁸

In principle, this question is highly relevant in the context of philosophical ethics. However, the way al-Ghazālī discusses it in the *Mustaṣfā* ignores this relevance, and that for two reasons: first, throughout the section devoted to this question he does not mention philosophy. All his arguments, objections, and explanations remain within the conceptual framework of jurisprudence and

³⁶ For the Arabic reception of the late ancient motto that logic is a tool for distinguishing true from false and good from bad, see Adamson 2011.

³⁷ The most relevant passages are to be found in Reinhart 1995, 70–75, 115–117. Reinhart’s analysis of al-Ghazālī’s arguments is diligent and convincing despite the scholarly debate provoked by his book (see Ormsby 1998, 1999; Reinhart 1999).

³⁸ Compare Ormsby 1998, 119.

Islamic theology, his main opponents apparently being the school of the Mu'tazila.³⁹ Second, al-Ghazālī's position in the *Mustaṣfā* is completely different from what he had advocated in the *Mizān*. Furthermore, he nowhere mentions these differences explicitly nor does he try to discuss the reasons behind them.

This is not the place for a detailed description of the arguments given in the *Mustaṣfā*. They are extensively discussed by Reinhart⁴⁰ and can easily be followed in his translation of the relevant passages of the Arabic text. In our context, it suffices to say that al-Ghazālī, in the *Mustaṣfā*, maintains an orthodox Ash'arī position. According to this position, any kind of moral assessments must be based on revelation because our intellect, although having some vague estimations of what might be recommended and what is to be avoided (arising from our self-interest) (Reinhart 1995, 171),⁴¹ is not able to decide independently what is right and what is wrong. This is expressed in a whole series of affirmations and arguments, including the following particularly unequivocal statement: "Therefore we say: the intellect neither commends nor detests nor does it make thanking the benefactor obligatory nor is there any assessment for acts before the arrival of the revelation" (al-Ghazālī 1971, 69.10–11).⁴²

5 Final Remarks: al-Ghazālī and Beyond

This result is surprising to say the least. The same scholar who told us that everybody should follow the universally valid rules of Aristotelian logic and that our intellect enables us to distinguish between "good" and "bad" ends up with a statement on the intellect (and thus on rationality) which seems to be opposite, if not contradictory, to what he himself affirmed elsewhere. Of course, there may be several ways of explaining the manifest differences between al-Ghazālī's statements. One way, for instance, would be to suppose that his views on the topic developed during his lifetime.⁴³ As far as we know, he wrote the *Mizān*

³⁹ Al-Ghazālī's discussion in the *Mustaṣfā* focuses on the positions and the arguments of the Mu'tazila; see Reinhart 1995, 88, 90–95, 97, 101, 103. Apart from the Mu'tazilis he mentions the Ash'aris as well as the Ḥanbalis, but not a single philosopher.

⁴⁰ See the arguments summarised by Reinhart 1995, 71–75.

⁴¹ Compare Said 2013, 83.

⁴² *Fa-li-hādihā qulnā al-'aql lā yuḥassinu wa-lā yuqabbihu wa-lā yūjibu shukr al-mun'im wa-lā ḥukm li'l-af'āl qabla wurūd al-shar'*. Compare the English translation by Reinhart 1995, 87.

⁴³ The developmental hypothesis which has a long history in scholarship has been stressed again recently by Madelung 2015 and Garden 2015, 208–210, 227–228.

in 488/1095, whereas the *Mustaṣfā* was finished nearly fifteen years later.⁴⁴ It is thus not impossible that his ideas may have changed during all these years.⁴⁵ Another possibility to explain the divergence would be to say that he adapted his doctrine to the audience he was addressing. As we have seen, he considered *fiqh* only to be the right way of governing ordinary people, whereas the elite should be guided by real scholars and sages (*al-‘ulamā’ wa’l-ḥukamā’*) (El-Rouayheb 2016, 414).⁴⁶ We could thus argue that the *Mustaṣfā* contains the doctrine for the *‘awāmm*, whereas the *Mizān*, addressing the *khawāṣṣ*, must argue on a different level.⁴⁷ In either case, however, we cannot help conceding that

⁴⁴ Although there is still some debate about the time of origin of the *Mizān*, most scholars agree that it was written in 488/1095 as a sequel to the *Mi‘yār* and earlier than the *Ihyā’* (Bouyges 1959, 28–29; Treiger 2012, 12; Garden 2015, 208–209). In the case of the *Mustaṣfā* we know for sure that it originated in 503/1109. Several manuscripts and Ibn Khallikān’s testimony confirm that the text was completed on 6 Muḥarram 503/5 August 1109 (Bouyges 1959, 73–74; Treiger 2013, 14).

⁴⁵ However, when we follow the developmental hypothesis assuming that the doctrine of the *Mizān* was superseded in later writings, we face a problem: there may be some evidence that the *Mizān* “shows al-Ghazālī in a very different frame of mind” than the one depicted in later texts (Garden 2015, 208–209), but it would be extremely difficult to argue that the entire ethical doctrine as exposed in it was superseded later on. Several parts of the *Ihyā’* draw heavily on the *Mizān* (see in particular *Kitāb ‘Ajā’ib al-qalb* [Book 21] and *Kitāb Riyāḍat al-nafs* [Book 22]). And even *al-Munqidh min al-ḍalāl*, written probably in 501/1107 (Bouyges 1959, 70–71; compare Treiger 2012, 14 who assumes a slightly earlier date of origin), is in some respect close to the ideas of the *Mizān*. The famous passage at the beginning of the *Munqidh* where al-Ghazālī describes his doubts and his quest for an indisputable foundation of all knowledge (see Rudolph 2018, 4–11 with further references) can be interpreted as a distant echo of the very last sentences of the *Mizān* which run as follows: “Those who do not doubt do not reflect. Those who do not reflect do not see. And those who do not see remain in blindness and error” (al-Ghazālī 1964, 409.21–22; 2006, 238 (German): *fa-man lam yashukk lam yanẓur wa-man lam yanẓur lam yabṣur wa-man lam yabṣur baqiya fī l-‘amā wa’l-ḍalāl*).

⁴⁶ Compare above n. 33.

⁴⁷ When following this hypothesis we face the problem of how to explain the conflicting statements about the *‘aql* to be found in the *Mizān* and in the *Mustaṣfā*. One solution would be that the word *‘aql* which is equivocal was used in different ways by al-Ghazālī. In the *Mustaṣfā* he argues against the Mu‘tazila and their understanding of moral reasoning. In this context *‘aql* could be rendered as “reason” (which would fit the doctrine of the Mu‘tazila) meaning a purely human capacity as opposed to sense perception. According to al-Ghazālī, this capacity is not able to really distinguish between “good” and “bad” because it lacks divine assistance and is always restrained to self-interest. In contrast, the argument of the *Mizān* seems to be developed within the philosophical tradition. In this context, *‘aql* may best be rendered as “intellect” meaning a faculty shared by human beings and several higher entities (that is, the cosmic intellects and ultimately God) and thus transcending the realm of anthropology. Endowed with this faculty, humans are supposed to have access to knowledge about “true” and “false” as well as

the connection between *falsafa* and (*uṣūl al-*) *fiqh* as established by al-Ghazālī is precarious. Regardless of *how* we explain the difference between his philosophical reflections as presented in the *Mizān* and his legal reasoning as presented in the *Mustaṣfā*, the fact remains that there is a considerable difference between the two which cannot be bridged by rhetorical efforts.

In sum, we thus have to admit that al-Ghazālī's contribution to our topic was rather limited and oddly vague. It is true, he identified the major points of convergence between philosophy and jurisprudence, or logic and ethics (including the theory of intellect). Furthermore, he was working on these points in particular when reflecting on the relation between Aristotelian logic and legal reasoning. Despite these efforts, however, al-Ghazālī did not succeed in establishing a systematic and consistent link between the two disciplines. This applies to the field of logic where he taught syllogisms but preferred using analogies when it came to juridical reasoning. And it applies to the domain of ethics and noetics where he presented his readers with conflicting statements about the role of the intellect (*al-'aql*).

Does this mean that our investigation ends up with a conclusion which is entirely negative, if not frustrating? Although it may seem so at first sight, this is not necessarily the case. At least not if we are ready to enlarge our perspective, and go beyond the scope of questions which have been asked so far. Until now, we have mainly focused on al-Ghazālī's own achievements by following what he has expressed in his own writings. There is, however, another possible approach to our topic, and the example of Ibn Rushd's *Mukhtaṣar al-Mustaṣfā* given above has already shown that this approach may be successful. It does not focus on what al-Ghazālī *himself* has written but on what he has *initiated* by his writings. In other words, it asks for his impact on the field and his possible influence on later reflections about philosophy and jurisprudence.

Seen from this angle, the picture changes considerably. Without elaborating systematically on our topic, al-Ghazālī seems to have opened a gate to it, thereby inciting other authors to go further in this direction. This is at least the impression we get when reading later works on *uṣūl al-fiqh*, for they include numerous passages discussing philosophical issues both in logic and in the field of ethics and noetics. As far as logic is concerned, this is easily demonstrated. From the sixth/twelfth century onward, many influential *fuqahā'* such as Ibn Qudāma (d. 620/1223), Sayf al-Dīn al-Āmidī (d. 631/1233), and Ibn al-Ḥājjib (d. 646/1248)

"good" and "bad." The only requirement would be that they cleanse their souls and thereby enable their intellects to be enlightened from "above" which is more or less the thematic focus of the *Mizān*.

introduced Aristotelian logic into legal theory, thereby following the example of al-Ghazālī's *Mustaṣfā*. Thus a long tradition of logical studies emerged amongst Islamic jurists, which was admittedly not uncontested but remained one of the characteristic features of later *uṣūl al-fiqh* works.⁴⁸

When it comes to ethics and noetics, the situation is different. In their case, it is more difficult to discern al-Ghazālī's impact on the field. This is all the more true as the study of these topics and their possible interaction with legal reasoning, in particular in the later period, is not even in its infancy. There is, however, an interesting textual example worth mentioning here. It cannot be assigned to al-Ghazālī directly but might be related in some way to the intellectual activities initiated by him. It reveals that later jurists accepted the integration of philosophical noetics into their own reflections, thereby connecting legal theory with the long tradition of reasoning about the intellect, which was ultimately rooted in Avicenna (Davidson 1992, 83–94; McGinnis 2010, 117–130)⁴⁹ but also shared by al-Ghazālī (Davidson 1992, 129–144; Treiger 2012, 18–29).⁵⁰

The example is taken from a text written by the Ottoman author Mullā Khusraw (d. 885/1480 or 1481). He was one of the eminent scholars working under the patronage of Meḥmed II and was appointed by him *qāḍī* of Constantinople as well as professor at the Ayasofya *madrasa*, to mention only his most prestigious positions.⁵¹ Mullā Khusraw wrote several works on *uṣūl al-fiqh*, among them a handbook called *The Stairs to Arriving* (*Mirqāt al-wuṣūl*) and a commentary on it entitled *The Mirror of the Principles on Commenting The Stairs to Arriving* (*Mir'āt al-uṣūl fī sharḥ Mirqāt al-wuṣūl*). Whereas the former is an extremely short *aide mémoire* to the standard issues to be taught in classes about *uṣūl*

48 See Hallaq 1990, 372 who emphasises that later scholars went several steps beyond al-Ghazālī in integrating the formal precepts of logic into the body of legal theory; compare Street 2004, 558–559; El-Rouayheb 2016, 414, 416–424.

49 For a more detailed account of Avicenna's epistemology, see Gutas 2000. Of course, important reflections on the intellect were already presented by earlier philosophers such as al-Kindī and al-Fārābī, but the terminology of the text to be discussed in the following is unequivocally Avicennan.

50 As mentioned, this does not apply to the *Mustaṣfā* but to other writings by al-Ghazālī such as the *Mizān* and the *Ihyā'* (compare above n. 45).

51 For biographical details, see Repp 1986, 128–137, 154–166; Reinhart 2007, 2–13; Arslan 2016, 39–46. On Mullā Khusraw's writings and his doctrine, see the proceedings of the symposium held at Bursa in 2011 which have been edited by Yücedoğlu 2013.

al-fiqh, the latter gives an elaborate account of the same topics,⁵² containing a number of inspiring and unexpected reflections.⁵³

One of these reflections focuses on the question of how to define a legal subject (*al-mukallaf*) or, as the text puts it, how to define “someone to whom the assessment applies” (*al-maḥkūm ‘alayhi*) (Mullā Khusraw 1307, 2:239.2, 1309, 2:432.10). Since this topic had already been treated numerous times in former *uṣūl al-fiqh* writings, one would not expect anything unconventional under this title. Despite being perfectly aware of the scholarly tradition, Mullā Khusraw nonetheless prefers to address the issue in a new way. This becomes evident from the very beginning of his presentation. In the *Mirqāt*, that is, the handbook, he introduces the topic as follows: “[Chapter] On someone to whom the assessment applies, that is, a legal subject: the fact of being a legal subject (*al-taklif*) depends on the basic legal capacity (*al-aḥliyya*) [of a person] which in turn depends on the [fact that he possesses a] dispositional intellect (*al-‘aql bi’l-malaka*).”⁵⁴

Presented in this terse form the statement would probably have been incomprehensible to his readers. Therefore Mullā Khusraw hastens to explain it by proffering a long commentary, this time in the *Mir’āt*: his explanation starts with a rough exposition of the philosophical or, more precisely, Avicennan theory of intellect. Accordingly we are told that the term ‘*aql*’, as used in philosophical language, points to a faculty of the soul which enables us to gain knowledge and to act according to our deliberations. As Mullā Khusraw (1307, 2:239.6–12; 1309, 2:432.12–23) explains, this faculty comprises two aspects which may be called “theoretical intellect” (*‘aql naẓarī*) and “practical intellect” (*‘aql ‘amalī*). The theoretical intellect in its turn is not uniform but exists in four different stages (*marātib*) depending upon the degree to which our soul has been able to receive abstracted forms and to grasp the intelligibles. These stages are called: (1) “material intellect” (*‘aql hayūlānī*), meaning the rational soul at the

52 On both texts, see Reinhart 2007, 14–15; Arslan 2016, 51–54. Arslan 2016, 85–261 gives a partial German translation of the *Mirqāt* but his translation does not cover the part which is of particular interest for us.

53 The text was available to me in two versions: (1) a facsimile of a manuscript of the *Mir’āt* published in Istanbul in 1307 AH; and (2) on the margin of Sulaymān b. ‘Abdallāh al-Izmīrī’s glosses (*ḥāshiya*) on the *Mir’āt* printed in Istanbul in 1309 AH. I owe both these versions to A. Kevin Reinhart who presented the text at a workshop on “Islamic Legal Theories in the Late Post-Classical Period” convened by Asad Q. Ahmed at UC Berkeley on September 29–October 1, 2017. I want to express my thanks to Asad Ahmed for inviting me to the workshop and to Kevin Reinhard for providing me with copies of the text and sharing with me important information about Mullā Khusraw.

54 *Mirqāt al-wuṣūl* as quoted in brackets in Mullā Khusraw 1307, 2:239.3–6; 1309, 2:432.10–12.

very beginning of its created nature (*fī mabda' al-fiṭra*) when it is still devoid of any object of knowledge; (2) “dispositional intellect” (*'aql bi'l-malaka*), the stage when our intellect has grasped those objects of knowledge which are self-evident (like the so-called “laws of thought”) and is thus disposed to attain further theoretical knowledge (*ista'addat li-taḥṣil al-naẓariyyāt*); (3) “actual intellect” (*'aql bi'l-fi'l*), the intellect that has acquired theoretical knowledge and has access to it whenever it wants but does not consider it at the moment; and (4) “acquired intellect” (*'aql mustafād*), the highest stage of human intellect, coming about when the intelligible forms are actually present in the soul (Mullā Khusraw 1307, 2:239.12–240.6; 1309, 2:432.23–32).⁵⁵

Having accomplished this exposition, Mullā Khusraw continues his presentation by emphasising the parallels between philosophical noetics and juridical theory. His elaboration on this point is long and multifarious, evoking several concepts such as *dhimma* (“legal protection”) and the Qur'anic *amāna* (“trust”) which need not be explained here in detail. However, the major point of his argument seems to be clear. It consists of declaring that two stages of (the philosophical theory of) the intellect just mentioned are relevant within the conceptual framework of jurisprudence: the “material intellect” and the “dispositional intellect”.

Both of them are somehow connected to our legal capacity, named in Arabic by the generic term *ahliyya*. The *ahliyya* exists in two forms (*naw'ānī*) which are to be understood as two stages: (a) a kind of necessary or basic capacity (*ahliyyat al-wujūb*) and (b) the capacity to act (*ahliyyat al-adā'*) (Mullā Khusraw 1307, 2:243.4–8; 1309, 2:434.4–6). The first one applies to human beings from the very beginning of their existence, that is, already in their embryonic state (*janīn*) (Mullā Khusraw 1307, 2:244.10; 1309, 2:434.29). It entails certain basic rights such as the right of inheriting (*irṭh*) (Mullā Khusraw 1307, 2:244.12–13; 1309, 2:434.31) and is itself related to the fact that we are rational beings. This does not mean that the *ahliyyat al-wujūb* is to be identified with our intellect but it *relies* on the intellect because the fact that human beings are endowed with a (material) intellect is a necessary condition (*shart*) of its existence (Mullā Khusraw 1307, 2:243.18–244.4; 1309, 2:434.14–24). By contrast, the second *ahliyya* is the characteristic feature of a legal subject (*mukallaf*). It is our capacity of acting according to moral obligations and of being responsible for our own acts (Mullā Khusraw 1307, 2:243.7–8; 1309, 2:434.6). This capacity presupposes that, having grasped the basic laws of thought, we have become able to reflect

⁵⁵ For Avicenna's theory which is the model of Mullā Khusraw's exposition, see Davidson 1992, 83–87; McGinnis 2010, 118–120.

on our own and to attain knowledge. In other words, *ahliyyat al-adā'* is, in philosophical terminology, nothing but our dispositional intellect (*'aql bi'l-malaka*) (Mullā Khusraw 1307, 2:240.6–241.8; 1309, 2:432.32–433.8). This may be surprising for religious scholars and certainly hard to accept. However, Mullā Khusraw (1307, 2:241.8–10; 1309, 2:433.8–9) insists on this identification by telling his colleagues that “even if something just mentioned may be taken from the teaching of the philosophers, it obviously does not contradict the doctrine of the *ahl al-sunna* as expressed by the theologians (*al-mutakallimūn*).”

Without doubt Mullā Khusraw's reflections on legal capacity and the stages of human intellect need further investigation. So far, we lack several pieces of information which would allow us to better understand his argument and situate it within the context both of his own doctrine and the legal discourse of his time. What we do know, however, is that he merged philosophy with jurisprudence. And, as we have just seen, his way of combining the two went far beyond any of al-Ghazālī's attempts in this field. These observations are instructive all the more as both of them confirm the twofold conclusion already expressed before: al-Ghazālī seems to have been successful in promoting the merging of philosophical with juridical reasoning, but later scholars seem to have been more successful in realising this goal.

Appendix

Table 1: The classification of the sciences according to Book One of *Iḥyā' 'ulūm al-dīn* (*The Revival of the Sciences of Religion*), that is, *Kitāb al-'Ilm* (*The Book of Knowledge*); the classification comprises the sciences characterised by al-Ghazālī as incumbent on the community as a whole (*farḍ al-kifāya*).

- I. Non-religious (*ghayr shar'iyya*) sciences:
 1. Praiseworthy (*maḥmūda*): medicine, arithmetic, agriculture, weaving, politics etc.
 2. Blameworthy (*madhmūma*): magic, science of the talismans, science of trickery and deception
 3. Permissible (*mubāḥ*): science of poetry, historiography etc.
- II. Religious (*shar'iyya*) sciences (which are all praiseworthy because of their prophetic origin but may contain blameworthy elements in practice introduced at a later stage):
 1. Principles/Sources (*uṣūl*): Qur'an, Sunna, consensus of the community (*ijmā'*), traditions of the Prophet's companions (*āthār al-ṣaḥāba*)

2. Branches (*furūʿ*):
 - a. Science of this world (*ʿilm al-dunyā*): jurisprudence (*fiqh*)
 - b. Science of the path to the hereafter (*ʿilm ṭarīq al-ākhirā*)
 - i. Science of unveiling (*ʿilm al-mukāshafa*)
 - ii. Science of [right] practice (*ʿilm al-muʿāmalā*) or science of the states of the heart (*ʿilm aḥwāl al-qalb*)
3. Preliminaries (*muqadimmāt*): lexicography (*luḡha*), grammar (*naḥw*)
4. Supplements (*mutammimāt*):
 - a. Related to the Qurʾan:
 - i. Concerning its expression (*lafẓ*): readings (*qirāʾāt*), letters (*ḥurūf*)
 - ii. Concerning its meaning (*maʿnā*): exegesis (*tafsīr*), principles of jurisprudence (*uṣūl al-fiqh*)
 - b. Related to the Sunna: science of the transmitters (*ʿilm al-rijāl*), principles of jurisprudence (*uṣūl al-fiqh*)

Table 2: The classification of the sciences according to the Exordium (*Khuṭba*) of *al-Mustaṣfā min ʿilm al-uṣūl* (*The Distillation of the Science of the Principles [of Jurisprudence]*)

- I. Purely rational (*ʿaqlī maḥḍ*) sciences: arithmetic, geometry, astronomy etc.
- II. Purely traditional (*naqlī maḥḍ*) sciences: exegesis (*tafsīr*) of the Qurʾan, sciences of the *ḥadīth* etc.
- III. Combined (*mā izdawaja fihi al-ʿaql wa-l-samʿ*) sciences: jurisprudence (*fiqh*), principles of jurisprudence (*uṣūl al-fiqh*) etc.

Table 3: The classification of the sciences according to the Preface (*Ṣadr*) of *al-Mustaṣfā min ʿilm al-uṣūl* (*The Distillation of the Science of the Principles [of Jurisprudence]*)

- I. Rational (*ʿaqliyya*) sciences: medicine, arithmetic, geometry etc.
- II. Religious (*dīniyya*) sciences:
 1. Universal (*kulliyya*): theology (*kalām*), science of the hidden (*ʿilm al-bāṭin*) or science of the heart (*ʿilm al-qalb*)

2. Particular (*juz'iyya*): jurisprudence (*fiqh*), principles of jurisprudence (*uṣūl al-fiqh*), sciences of the *ḥadīth*, exegesis (*tafsīr*) of the Qur'an etc.

Table 4: The structure of *al-Mustaṣfā min 'ilm al-uṣūl* (*The Distillation of the Science of the Principles [of Jurisprudence]*)

Introduction (*Muqaddima*): The epistemological fundaments of the theoretical sciences (*madārik al-'ulūm al-naẓariyya*)

Part 1: Legal assessment (*al-ḥukm*)

Part 2: The sources of legal assessments (*uṣūl al-aḥkām*)

Part 3: The proofs for legal assessments (*adillat al-aḥkām*)

Part 3: The conditions for being a legal scholar (*mujtahid*)

Table 5: Description and classification of the sciences according to the Introduction of Ibn Rushd's *Epitome of the "Distillation"* (*Mukhtaṣar al-Mustaṣfā*)

I. Theoretical Science:

Its goal (*ghāya*) is a belief (*i'tiqād*) emerging in the soul; it deals with questions such as atoms (*al-juz' alladhī lā yatajazza'*) and the creation of the world in time (*ḥudūth al-'ālam*).

[Identification:

- a. Within the religious sciences: *kalām*
- b. Within philosophy (as mentioned in further classifications of the sciences by Ibn Rushd): metaphysics and physics]

II. Practical Science:

Its goal is action (*'amal*).

1. Universal:

It deals with legal assessments (*al-aḥkām*), the sources of legal assessments (*uṣūl al-aḥkām*) such as the Qur'an, the Sunna, and the consensus of the community, as well as the conditions for being a legal scholar (*al-mujtahid*).

[Identification:

- a. Within the religious sciences: *uṣūl al-fiqh*
- b. Within philosophy: ethics]

2. Particular:

It deals with the *furū'* and the duties (*al-farā'id*) incumbent on every believer.

[Identification:

- a. Within the religious sciences: *fiqh*
- b. Within philosophy: politics]

III. Instrumental Sciences:

It deals with the rules of reasoning as applied in theoretical and practical science, e.g. the proofs for legal assessments (*adillat al-aḥkām*).

[Identification:

- a. Within the religious sciences: *uṣūl al-fiqh*
- b. Within philosophy: logic]